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13 Attorneys for Debtors

E-FILED on June 6, 2006

**UNITED STATES BANKRUPTCY COURT
 DISTRICT OF NEVADA**

15 In re:
 16 USA COMMERCIAL MORTGAGE COMPANY,
 Debtor.

Case Nos. BK-S-06-10725 LBR
 Case Nos. BK-S-06-10726 LBR
 Case Nos. BK-S-06-10727 LBR
 Case Nos. BK-S-06-10728 LBR
 Case Nos. BK-S-06-10729 LBR

17 In re:
 18 USA CAPITAL REALTY ADVISORS, LLC,
 Debtor.

Chapter 11

19 In re:
 20 USA CAPITAL DIVERSIFIED TRUST DEED
 FUND, LLC,
 Debtor.

Jointly Administered Under
 Case No. BK-S-06-10725 LBR

21 In re:
 22 USA CAPITAL FIRST TRUST DEED FUND, LLC,
 Debtor.

**DEBTOR'S LIMITED OPPOSITION
 TO EMERGENCY MOTION FOR
 ORDER REGARDING PROJECT
 DISBURSEMENT GROUP, INC.'S
 DISBURSEMENT OF INTEREST
 PAYMENTS TO DEBTOR
 [AFFECTS DEBTOR USA
 COMMERCIAL MORTGAGE
 COMPANY]**

23 In re:
 24 USA SECURITIES, LLC,
 Debtor.

25 Affects:

- All Debtors
- USA Commercial Mortgage Company
- USA Securities, LLC
- USA Capital Realty Advisors, LLC
- USA Capital Diversified Trust Deed Fund, LLC
- USA First Trust Deed Fund, LLC

Date of Hearing: June 15, 2006
 Time of Hearing: 10:00 a.m.

1 On or about May 22, 2006, Project Disbursement Group, Inc. ("PDG") filed its Emergency
2 Motion for Order Regarding Project Disbursement Group, Inc.'s Disbursement of Interest
3 Payments to Debtor (the "PDG Motion"). Debtor USA Commercial Mortgage Company
4 ("USACM") hereby files its Limited Opposition to the PDG Motion.

POINTS AND AUTHORITIES

Factual Background

7 As outlined in the PDG Motion, on or about May 12, 2006, Debtor USACM and PDG
8 signed a "Stipulation And Interim Order Authorizing Project Disbursement Group, Inc. To Make
9 Disbursements From Funds It Holds As Disbursement Agent" (the "Stipulation") with respect to
10 the disbursement to USACM as Servicer of interest payments from interest reserves being held by
11 PDG for various loans pursuant to certain Escrow Agreements and Control Services Agreements
12 with Debtor USACM. A true and correct copy of the Stipulation as it was signed by Debtor
13 USACM and PDG is attached hereto as **Exhibit "A"** and incorporated herein. The Stipulation
14 was subsequently forwarded to the Court, but before entering the Stipulation, the Court requested
15 that the Office of the United States Trustee and the Committees appointed in these jointly
16 administered cases also execute the Stipulation. The Office of the United States Trustee has now
17 executed the Stipulation, and Debtor USACM has circulated the Stipulation to counsel for the
18 Committees¹ for their review. For that reason, the Stipulation has not yet been resubmitted to the
19 Court.

Memorandum of Law

21 To the extent the PDG Motion constitutes an additional request by PDG that the Court
22 approve and enter the Stipulation, Debtor USACM joins in that request by PDG. However, to the
23 extent that PDG has now changed its mind, and the PDG Motion can be construed to seek other
24 relief that is inconsistent with the Stipulation that has already been agreed to by PDG, such as
25 permission from the Court for PDG “to retain the funds, to pay the funds to another party whom
26 this Court directs, or to file a motion to interplead the funds with this Court,” (see Page 4 of PDG

¹ At the time of circulation, Stutman Treister & Glatt was the only existing counsel in place for the Committees.

1 Motion), Debtor USACM objects to PDG's request for any relief that is not consistent with the
 2 terms of the Stipulation.

3 Debtor USACM is entitled to collect its servicing fee from interest payments made on the
 4 loans for which PDG is acting as disbursement agent. However, notwithstanding its agreement in
 5 the Stipulation to begin making disbursements, PDG is still holding the interest reserves and not
 6 disbursing them to Debtor USACM as Servicer as agreed between the parties. By holding on to
 7 the interest reserves and not disbursing them, PDG is exercising control over property of Debtor
 8 USACM's bankruptcy estate because the portion of the unpaid interest payments that is
 9 attributable to Debtor USACM's servicing fee is property of Debtor USACM's bankruptcy estate.

10 PDG's continued refusal to disburse to Debtor USACM, notwithstanding its agreement to
 11 do so in the Stipulation, is a violation of the automatic stay. PDG is holding significant sums in
 12 the interest reserves, which should be paid over immediately to Debtor USACM pursuant to the
 13 Stipulation. Under 11 U.S.C. § 362(a)(3), the filing of Debtor USACM's Chapter 11 bankruptcy
 14 petition automatically operates as a stay, applicable to all entities, including PDG, of "any act to
 15 obtain possession of property of the estate or of property from the estate or to exercise control over
 16 property of the estate." PDG is exercising control inconsistent with the terms of the Control
 17 Account Escrow Agreements and Security Agreements and the Stipulation over the interest
 18 reserves that need to be used to pay interest payments on the loans for which PDG is acting as
 19 disbursement agent, thereby causing damages to Debtor USACM as well as damaging the
 20 borrowers for those loans. Debtor USACM reserves the right to seek sanctions against PDG for
 21 this violation of the automatic stay.

22 It is significant that PDG has not indicated in the PDG Motion any reason why the interest
 23 payments from the interest reserves that were originally funded through USACM as Servicer
 24 should be made to any party other than to USACM as Servicer, which is consistent with the terms
 25 of the Control Account Escrow Agreements and Security Agreements with PDG. Debtor USACM

26 ///

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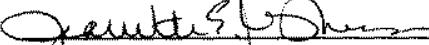
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1 respectfully submits that the payment arrangement agreed to in the Stipulation is the appropriate
2 relief to be granted for the PDG Motion.

3 Respectfully submitted on June 6, 2006.

4
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EXHIBIT “A”

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Proposed Attorneys for Debtors and Debtors-in-Possession

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

19 In re:	Case No. BK-S-06-10725 LBR
20 USA COMMERCIAL MORTGAGE COMPANY,	Case No. BK-S-06-10726 LBR
	Debtor.
21 In re:	Case No. BK-S-06-10727 LBR
22 USA CAPITAL REALTY ADVISORS, LLC,	Case No. BK-S-06-10728 LBR
	Case No. BK-S-06-10729 LBR
23 In re:	Chapter 11
24 USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC,	Jointly Administered Under
	Case No. BK-S-06-10725 LBR
25 In re:	Date: N/A
26 USA CAPITAL FIRST TRUST DEED FUND, LLC,	Time: N/A
27 In re:	
28 USA SECURITIES, LLC,	
	Debtor.

1 Affects:

2 All Debtors

3 USA Commercial Mortgage Company

4 USA Securities, LLC

5 USA Capital Realty Advisors, LLC

6 USA Capital Diversified Trust Deed Fund, LLC

7 USA First Trust Deed Fund, LLC

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9 **STIPULATION AND INTERIM ORDER AUTHORIZING PROJECT DISBURSEMENT**

10 **GROUP, INC. TO MAKE DISBURSEMENTS FROM FUNDS IT HOLDS AS**

11 **DISBURSEMENT AGENT [AFFECTS USA COMMERCIAL MORTGAGE COMPANY]**

12

13 Debtor and Debtor-in-Possession USA Commercial Mortgage Company ("Debtor" or
 14 "USA"), by and through its counsel, Jeanette E. McPherson, Esq. of the Schwartzer & McPherson
 15 Law Firm, and Project Disbursement Group, Inc. ("PDG"), by and through its counsel, Matthew
 16 Q. Callister, Esq., hereby stipulate and agree as follows:

17 **WHEREAS**, the Debtor filed its voluntary petition for relief under Chapter 11 of Title 11
 18 of the United States Bankruptcy Code on April 13, 2006 (the "Petition Date"), and the Debtor
 19 continues to operate its business and possess its property as a debtor-in-possession pursuant to
 20 Bankruptcy Code §§ 1107 and 1108.

21 **WHEREAS**, pursuant to certain pre-petition written agreements entitled "Control Account
 22 Escrow Agreement and Security Agreement" (the "Escrow Agreements") entered into by and
 23 among: (1) PDG, (2) the Debtor as authorized Agent and Servicer for certain loan investors, and
 24 (3) certain borrowers (the "Borrowers"), and pursuant to certain other pre-petition written
 25 agreements entitled "Agreement for Construction Control Services" (the "Control Services
 26 Agreements") entered into between PDG and the Debtor relating to loans to the Borrowers, PDG
 27 is currently acting as the disbursement agent for the Debtor (in its capacity as Agent and Servicer)
 28 and in some instances for the Borrower in connection with loans that were originated and are
 serviced by the Debtor (the "Loans"). The Escrow Agreements and the Control Services
 Agreements are collectively referred to hereinafter as the "Disbursement Agreements." Attached
 hereto as Exhibit A is a spreadsheet providing certain information about each of the Loans for
 which PDG acts as disbursement agent under the Disbursement Agreements.

1 **WHEREAS**, pursuant to the terms of the Disbursement Agreements, the Debtor as
2 Servicer forwarded to PDG prior to the Petition Date certain loan funds: (1) to be held by PDG as
3 interest reserves to be disbursed periodically to the Debtor (in its capacity as Agent and Servicer)
4 as interest payments for the Loans, and (2) in some cases, to be held by PDG as construction funds
5 to be disbursed as directed by the Borrowers, with the consent of the Debtor as Servicer, as
6 construction advances in connection with the Loans. PDG is still holding some of the loan funds
7 to be disbursed pursuant to the Disbursement Agreements as set forth above.

8 **WHEREAS**, after the Petition Date, PDG has continued to disburse loan funds as directed
9 by the Borrowers, with the consent of the Debtor as Servicer, as construction advances in
10 connection with the Loans, but PDG has temporarily stopped disbursing funds as interest
11 payments to the Debtor as Servicer from the interest reserve portions of the Loans.

12 **WHEREAS**, PDG asserts that, after the Petition Date, PDG was informed by several
13 investors that interest payments made by PDG to Debtor on or about March 2006 were not
14 subsequently disbursed by Debtor to said investors, and based on this information, PDG
15 temporarily stopped disbursing funds as interest payments to the Debtor.

16 **WHEREAS**, the Debtor asserts that it is authorized under the terms of Loan Servicing
17 Agreements entered into between the Debtor as Servicer and various loan investors for the Loans
18 (the "Investor Servicing Agreements") to provide periodic disbursement authorizations to PDG for
19 the payment of interest on the Loans from the interest reserves being held by PDG and, in some
20 cases, for construction funding on the Loans, consistent with the Disbursement Agreements and
21 the disbursement terms of the executed loan documents for the Loans.

22 **WHEREAS**, the Debtor asserts that its bankruptcy filing does not relieve PDG of any of
23 its obligations under the Disbursement Agreements, including its obligation to disburse interest
24 payments to the Debtor as Servicer from the interest reserves, and the Debtor further asserts that
25 providing these disbursement authorizations to PDG is in the ordinary course of Debtor's business
26 under Section 363(c)(1) of the Bankruptcy Code and that the Court also has the power under
27 Section 105(a) of the Bankruptcy Code to order PDG to comply with the Disbursement
28 Agreements and to follow the disbursement authorizations and directives PDG receives from the

1 Debtor regarding the Loans.

2 **NOW, THEREFORE**, in consideration of the foregoing, the Debtor and PDG agree as
3 follows:

4 1. The foregoing recitals are incorporated herein in full.

5 2. PDG is authorized to continue making disbursements to the Debtor as Servicer for
6 interest payments from the interest reserves and to continue making disbursements as directed by
7 the Borrowers, subject to the consent of the Debtor as Servicer, for construction funding,
8 according to the Disbursement Agreements and relevant loan documents.

9 3. The Debtor, as Servicer, is authorized to continue to exercise its powers on behalf
10 of the loan investors under the Investor Servicing Agreements and to continue to provide PDG
11 with necessary disbursement instructions and authorizations for the Loans that are consistent with
12 the Disbursement Agreements and terms of the loan documents for the Loans.

13 4. In those cases where Debtor as Servicer approves a Request for Disbursement and
14 sends to PDG the appropriate Instructions to Disburse, and PDG has previously received the
15 disbursement amount from Debtor as Servicer, then PDG shall immediately make the required
16 disbursements to the Debtor as Servicer for interest payments on the Loans from the interest
17 reserves being held by PDG and shall immediately make the required disbursements as directed by
18 the Borrowers, subject to the consent of the Debtor as Servicer, for construction funding on the
19 Loans.

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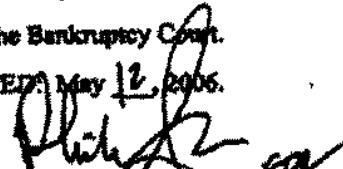
1 5. The Debtor will hold the funds received as interest payments from PDG in its DIP
2 Collection Account (which is separate from and will not be commingled with the Debtor's
3 separate operating account(s)) as described in motions filed by the Debtor in its bankruptcy case
4 and will not disburse such funds except as directed by the Bankruptcy Court.

5 DATED: May ____, 2006

6 DATE: May 12, 2006.

7 /s/ Jeanette E. McPherson

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15 Matthew Q. Callister, Esq.
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19 Attorneys for Project Disbursement Group, Inc.

20 **ORDER**

21 **IT IS SO ORDERED.**

22 Submitted By:

23 /s/ Jeanette E. McPherson

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1 Approved/Disapproved by:

2
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4 Candace C. Cartyon, Esq.
5 Shea & Cartyon, Ltd.
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8 Proposed Special Counsel for Official Committee of Equity Security Holders of USA Capital First
9 Trust Deed Fund, LLC and USA Capital Diversified Trust Deed Fund, LLC, and for the Official
10 Committee of Executory Contract Holders of USA Commercial Mortgage Company

11 Approved/Disapproved by:

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EXHIBIT “A”

